| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/733,847 | 12/10/2003 | Peter A. Carr | 0S6754/0124079 | 9003 |

26242        7590        01/27/2009
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| EXAMINER |
|---|
| LU, FRANK WEI MIN |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1634 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 01/27/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/733,847 | CARR ET AL. |
| | Examiner | Art Unit | |
| | FRANK W. LU | 1634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on *07 October 2008*.

2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) *11-16 and 19-30* is/are pending in the application.

    4a) Of the above claim(s) *20,23-25 and 28* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *11-16, 19,21,22,26,27,29 and 30* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *30 August 2004* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

## DETAILED ACTION

### *CONTINUED EXAMINATION UNDER 37 CFR 1.114 AFTER FINAL REJECTION*

1.      A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission of RCE and the amendment filed on October 7, 2008

have been entered. The claims pending in this application are claims 11-16 and 19-30 wherein

claims 20, 23-25, and 28 have been withdrawn from the examination due to species election

mailed on February 22, 2007. Rejection and/or objection not reiterated from the previous office

action are hereby withdrawn in view of applicant's amendment filed on October 7, 2008. Claims

11-16, 19, 21, 22, 26, 27, 29, and 30 will be examined.

### *Claim Rejections - 35 USC § 112*

2.      The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

3.      Claims 11-16, 19, 21, 22, 26, 27, 29, and 30 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention.

4.      Claim 11 is rejected as vague and indefinite. Since step b) does not indicate which way

can be used to decrease the relative amount of any nucleic acid molecules that contain errors, it is

unclear why error-free nucleic acid molecules from said plurality or pool can be selectively

amplified thereby decreasing the relative amount of any nucleic acid molecules that contain errors. Please clarify.

5.      Claim 12 is rejected as vague and indefinite because it is unclear why error in said plurality or pool can be corrected using nucleic acid molecules in said plurality or pool as a template. Please clarify.

6.      Claim 13 is rejected as vague and indefinite because it is unclear which way can be used to remove errors from portions of said nucleic acid molecules and yield nucleic acid molecules having an error-free sequence. Please clarify.

7.      Claim 21 is rejected as vague and indefinite because it is unclear that the step of correcting errors comprises the step of mismatch recognition and cleavage of what. Please clarify.

8.      Claim 26 is rejected as vague and indefinite because it is unclear that the step of removing errors comprises the step of mismatch recognition and cleavage of what. Please clarify.

9.      Claim 29 recites the limitation "the separated action" in the claim. There is insufficient antecedent basis for this limitation in the claim because there is no phrase "separated action" in claim 13. Please clarify.

10.     Claim 29 is rejected as vague and indefinite because it is unclear why the separate action of a mismatch binding protein and a nuclease (ie., by interacting with what) can be used to remove errors. Please clarify.

## *Conclusion*

11.     No claim is allowed.

12.     Papers related to this application may be submitted to Group 1600 by facsimile

transmission.  Papers should be faxed to Group 1600 via the PTO Fax Center.  The faxing of

such papers must conform with the notices published in the Official Gazette, 1096 OG 30

(November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28,

1993)(See 37 CAR § 1.6(d)).  The CM Fax Center number is (571)273-8300.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Frank Lu, Ph.D., whose telephone number is (571)272-0746.

The examiner can normally be reached on Monday-Friday from 9 A.M. to 5 P.M.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ram Shukla, can be reached on (571)272-0735.

        Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to (571) 272-0547.

/Frank  W Lu /
Primary Examiner, Art Unit 1634
January 13, 2009